STATE OF MICHIGAN

COURT OF APPEALS

NORMAN HAMMETT, Plaintiff-Appellant,	UNPUBLISHED March 19, 1999
v	No. 192343 Lapeer Circuit
ROSS MOODY CHEVROLET, INC., Defendant-Appellee.	LC No. 94-020008-CL ON REMAND

Before: Bandstra, P.J., and Hood and Jansen, JJ.

PER CURIAM.

This case is before us on remand from the Supreme Court for reconsideration in light of its opinion in *Lytle v Malady (On Rehearing)*, 458 Mich 153; 579 NW2d 906 (1998). In our prior decision, we reversed the trial court's grant of summary disposition in favor of defendant on plaintiff's wrongful discharge claim, holding that a question of fact existed as to whether plaintiff had a just-cause employment contract with defendant. On remand, we again reverse the trial court's grant of summary disposition on the wrongful discharge claim.

As an initial matter, we acknowledge that the Supreme Court instructed us to address whether the former owner of the defendant Chevrolet dealership, William Fuller, could bind the current owner, Ross Moody, to any just-cause contract. Defendant, however, conceded at oral argument that Fuller could bind Moody. Thus, this issue does not warrant further consideration under the facts of this case[1].

In *Lytle, supra* at 163-164, our Supreme Court reiterated that in Michigan, the presumption is for at-will employment.

> Generally, and under Michigan law by presumption, employment relationships are terminable at the will of either party. However, the presumption of employment at will can be rebutted so that contractual obligations and limitations are imposed on an employer's right to terminate employment. The presumption of employment at will is overcome with proof of either a contract provision for a definite term of employment, or one that forbids discharge absent just cause. Courts have recognized the following three ways by which a plaintiff can prove such contractual terms: (1) proof of "a

> contractual provision for a definite term of employment or a provision forbidding discharge absent just cause", (2) an express agreement, either written or oral, regarding job security that is clear and unequivocal; or (3) a contractual provision, implied at law, where an employer's policies and procedures instill a "legitimate expectation" of job security in the employee. (citations omitted).

Plaintiff herein claims that a question of fact exists under both the express agreement method of proving a just-cause contract and under the legitimate-expectations method.

Plaintiff relies on the following facts: at the time he was hired in 1977, he was told that his employment would "go on and on" and that he was a permanent employee; that he was told he would have a position with defendant for as long as he wanted it and was capable of handling it; that at the time the dealership changed ownership in 1983, he was told by Fuller, in response to his concerns about job security, that he had nothing to worry about and that he could not be discharged without good cause; that Moody later indicated to him that employees could not be discharged without good cause and without first receiving reprimands and warnings about poor performance; that Moody told him on three or four occasions that he would have just-cause employment; and that other employees believed that there needed to be cause to be discharged.

Plaintiff's claim fails under the legitimate-expectations method of proving a just-cause contract. There is a two-step inquiry to evaluate a legitimate-expectations claim.

> The first step is to decide "what, if anything, the employer has promised," and the second requires a determination of whether that promise is "reasonably capable of instilling a legitimate expectation of just-cause employment." [*Id.* at 164-165, citing *Rood v General Dynamics Corp*, 444 Mich 107, 138-139; 507 NW2d 591 (1993).]

The inquiry focuses on employer policy statements concerning employee discharge and whether those statements are reasonably capable of being interpreted as promises of just-cause employment. *Rood, supra* at 140. It centers around policy statements that are disseminated to the general work force or to specific classes within the work force. *Id.* at 138. Not all policy statements are promises. *Lytle, supra* at 165. "A lack of specificity of policy terms or provisions, or a policy to act in a particular manner as long as the employer so chooses, is grounds to defeat any claim that a recognizable promise in fact has been made." *Id.*

In this case, plaintiff fails to point to any specific policy or procedure to support his legitimate-expectations claim. It is insufficient that when plaintiff and Moody met about "employees and the rights and wrongs and the procedures of handling problems", Moody instructed him to have reprimands and warnings in writing and that if he had good cause, he could discharge an employee. There is no evidence that these informal and unwritten statements about good cause were disseminated to the work force either orally or in writing. Thus, they are not policy statements capable of supporting a legitimate-expectations claim. Moreover, even if the statements were policy statements, they lack both "the specificity and commitment that raises an employer's policy to the level of a promise." *Id.* They contain no definite terms, which could be construed as creating promises under the first step of the inquiry. In

Lytle, the plaintiff's proofs were stronger than those presented herein; yet, her claim still failed. The plaintiff offered written evidence of a policy. The employee handbook contained the following language: "[n]o employee will be terminated without proper cause or reason and not until management has made a careful review of the facts." *Id.* at 166. The Court found such language to be insufficient to rise to the level of a promise, particularly because the handbook indicated that the policies were not binding. The Court also found that the "proper cause" statement was too vague and indefinite to constitute a promise. *Id.* In this case, because there is no evidence that defendant had a specific and binding policy of discharging employees only for just cause, we cannot conclude that a recognizable promise was made. Thus, plaintiff's legitimate-expectations claim must fail.

Plaintiff's claim, however, does not summarily fail under the express agreement method of proving just-cause employment. Oral contracts for job security are recognized "where the circumstances suggest both parties intend to be bound". *Rood, supra* at 118-119. The verbal assurances of job security must be clear and unequivocal in order to create just-cause employment. *Lytle, supra* at 171, citing *Rowe v Montgomery Ward & Co, Inc,* 437 Mich 627, 640-641; 473 NW2d 268 (1991); *Rood, supra* at 119. There must be an indication "of an actual negotiation *or* an intent to contract for permanent or just-cause employment." *Lytle, supra* at 172 (emphasis added).

> [T]o determine whether there was mutual assent to a contract, "we use an objective test, 'looking to the expressed words of the parties and their visible acts,'" and ask whether a reasonable person could have interpreted the words or conduct in the manner that is alleged. Thus, we begin our analysis by looking "to all the relevant circumstances surrounding the transaction, including all writings, oral statements, and other conduct by which the parties manifested their intent." [*Id.* (citations omitted).]

Viewing the evidence in a light most favorable to plaintiff, and making all legitimate inferences in his favor, *Jackson v County of Saginaw,* 458 Mich 141, 146; 580 NW2d 870 (1998), we believe that plaintiff has raised a question of fact as to whether the parties intended to be bound by a just-cause contract.

Plaintiff relies on Fuller's pre-employment statements that employment would be permanent, that employment would go "on and on", and that plaintiff would have a position as long as he wanted it and was capable of handling it. Standing alone, these statements are insufficient proof of a just-cause contract. The statements are not clear and unequivocal assurances that plaintiff could not be fired absent just cause. In fact, the statements fail to mention termination at all. In addition, there is no evidence that the pre-employment statements were made during specific negotiations over job security[2].

In *Schippers v SPX Corp,* 444 Mich 107, 123-124, 127; 507 NW2d 591 (1993), the companion case to *Rood, supra,* the pre-employment statements made to the plaintiff included that "unless something really was wrong, [he] would be there for retirement" and "as long as [we] have a truck, [you] would be the driver." These statements were insufficient to create just-cause employment because they were not made during discussions of job security "in the sense of requiring just-cause" for termination. *Id.* at 124-125. There was an insufficient basis to find that there was specific negotiation for a just-cause contract. *Id.* at 125-126. In *Rowe, supra,* the plaintiff was informed that as long as

she sold, she would have a job. There was no evidence that plaintiff engaged in pre-employment negotiations regarding security or that she inquired about job security. *Rowe, supra* at 643. Thus, the Court held that there was no objective evidence to support that there was a meeting of the minds between the parties. *Id.* Similarly, in *Lytle, supra* there was "no indication of an actual negotiation. . . for permanent or just-cause employment." *Id.* at 172. Contrast the aforementioned cases to *Toussaint v Blue Cross & Blue shield of Michigan*, 408 Mich 579, 597; 292 NW2d 880 (1980). Toussaint, after inquiring about job security during his interview, was told that he would be with the company "as long as [he] did [his] job" *and* was given a manual of personnel policies that reinforced the oral assurance of job security.

Although the pre-employment statements themselves are not sufficient to sustain plaintiff's claim that he had a just-cause contract, they should not be considered alone. *Lytle, supra* at 172. In addition to the pre-employment statements, plaintiff alleges that Moody told him on three or four occasions that he would have a just-cause contract. Plaintiff also alleges that around the time the dealership changed ownership, after he had been employed for numerous years, he discussed his job security with Fuller and was specifically informed that he did not have to worry about job security *and could not be discharged without good cause*. This "good cause" statement was clear and unequivocal, and was made in direct response to an inquiry about job security. It supports plaintiff's theory that both he and Fuller intended to have a just-cause contract, that the parties believed such a contract was in place, and that the pre-employment statements were made with the intent of creating permanent, just-cause employment. The fact that defendant denies that Fuller or Moody made "good cause" statements does not change the result in this case. It merely creates a credibility contest between plaintiff and defendant. Issues of credibility are for the trier of fact to decide. *In re Hardin,* 184 Mich 107, 109; 457 NW2d 347 (1990). Looking at all of the relevant circumstances, there is sufficient evidence to create a question of fact as to whether defendant intended to be bound by a just-cause contract.

Reversed and remanded for further proceedings on plaintiff's wrongful discharge claim. We do not retain jurisdiction.

/s/ Harold Hood
/s/ Kathleen Jansen

[1] We also note that neither party raised or briefed this issue, and there are insufficient facts in the record to properly analyze the relationship between Fuller and Moody.

[2] Although plaintiff left another position to work for Fuller, this is insufficient "to base a finding of specific negotiations regarding" a just-cause term. *Rood, supra* at 125-126.